IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Ram Singh & Others Vs. State of Rajasthan
(D.B. Criminal Appeal No.276/2004)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 26-2-2004 in Sessions Case No.71/2003 passed by Shri Baldev Ram Chaudhary, RHJS, Additional Sessions Judge (Fast Track) No.1, Tonk.

Date of Judgment: May 03, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Nemi Chand Chaudhary] for the appellants.
Mr. Vijay Chaudhary]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

We notice many grey areas in the story woven by the prosecution in the instant case. Ganga Ram, the deceased met with homicidal death on July 10, 2003 while he was keeping a watch on the crop at his field. Ram Singh, Pappu Singh @ Laxman Singh, Inder Singh and Banna Lal, the appellants herein, were put to trial on the allegation of murder of Ganga Ram before the learned Additional Sessions Judge (Fast Track) No.1, Tonk, who vide judgment dated February 26, 2004 convicted and sentenced them as under:-

U/s.302/34 IPC:

Each to suffer imprisonment for life and fine of Rs.100/-, in default to further suffer rigorous imprisonment for three

months.

U/s.341 IPC:

Each to suffer simple imprisonment for one month.

The substantive sentences were ordered to run concurrently.

2. Amar Chand son of deceased Ganga Ram handed over a written report on July 10, 2003 at Police Station Deoli naming the four appellants as the assailants. According to the report Ganga Ram's wife and daughter were the eye witnesses of the incident. On that report case under sections 147, 341, 323, 447 and 435 IPC was registered and investigation commenced. In the course of investigation Ganga Ram died on July 18, 2003 and section 302 IPC was added. Dead body was subjected to autopsy, statements of witnesses were recorded, necessary memos were drawn and after completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Tonk. Charges under sections 341 and 302 alternatively 302/34 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 19 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. Nine witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard the submissions advanced before us and weighed the material on record.

4. Injuries sustained by Ganga Ram were examined on July 10, 2003 vide injury report (Ex.P-29) which reads as under:-

1. Lacerated wound 1cm x 2cm x muscle deep medial angle of Lt. eye
2. Lacerated wound 1cm x5cm x skin deep Lt. eye brow
3. Lacerated wound 3cm x 5cm x muscle deep just above lt. eye brow
4. Lacerated wound 1cm x 2cm x muscle deep lateral angle of Rt. eye
5. Lacerated wound 1cm x 1cm x skin deep over nose
6. Lacerated wound 2cm x 5cm x muscle deep near lt. ear.
7. Swelling 3cm x 2cm chin & Rt. mandibular angle.
8. Broken teeth Lowe canine & Rt. lower incisor tooth
9. Swelling 7cm x 5cm Lt. shoulder region
10. Swelling 5cm x 8cm Lt. hand & wrist
11. Swelling 5cm x 3cm Rt. wrist
12. Lacerated wound 3cm x 1cm x muscle deep lower 1/3 of Rt. leg antro medial surface.

5. Dr. Rajesh Jain (Pw.12), who examined the injuries of Ganga Ram on July 10, 2003 in his cross examination deposed as under:-

> "यह सही है कि मेरी राय के अनुसार वे चोटें प्रक्रति के सामान्य अनुक्रम में म्रत्यु कारित करने के लिए पर्याप्त भी हो सकती थी और नहीं भी ... मेरे पास एक्स-रे की राय आयी नहीं थी इसलिए इन चोटों की प्रत्येक चोटों की प्रक्रति कैसी थी मैं बताने में असमर्थ हूं।"

6. Dr. H.L.Bairwa (Pw.19), who conducted autopsy on the dead body on July 18, 2003 deposed that Ganga Ram was admitted to the hospital on July 10, 2003. He was given treatment in Neuro Surgery Ward. There was a stitched wound on the left eye brow. Cause of death was coma due to head injury.

7. A further look at the material on record demonstrates that Badri Bai (Pw.3) and Chhoti (Pw.7) were examined as eye witnesses of the incident. Badri Bai, wife of deceased, in her deposition stated that while her

husband was at his Tapri wala field and keeping a watch over crop, nine persons including appellants came over there and started inflicting lathi blows on the person of her husband. She and her daughter Chhoti then rushed to the village and informed about the incident to her son Amar Chand. Chhoti (Pw.7), daughter of deceased, corroborated the testimony of Badri Bai.

8. Bhanwar Lal Patwari (Pw.1) deposed that pursuant to the direction of police station Deoli he reached to Khasra No.440 situated in village Maleda which was the place of incident. As per Jama Bandi Svt.2056 to 2059 the land was shown in the Khatedari of Ram Singh, Laxman Singh, Hans Bai and Tosh Bai LRs of Jawan Singh Rajput. He further stated that although the land was owned by Ram Singh, Ganga Ram constructed a hut over some area of it. Except that area, all the land had been in the possession of Ram Singh.

9. Appellants Banna Lal and Inder Singh, in their explanation under section 313 CrPC raised plea of alibi and examined Durga Lal (Dw.1), Ugmi Chand (Dw.2), Moti Lal (Dw.3), Prakash (Dw.4), Rameshwar (Dw.6), Ranjeet Singh (Dw.7) and Shakti Singh (Dw.8) in support of their defence. Appellant Pappu Singh @ Laxman Singh stated that he was implicated falsely because he was the brother of Ram Singh.

10. Having closely scanned the testimony of Badri Bai and Chhoti, we are of the opinion that their evidence is a mixture of truth and falsehood. Having extracted from the evidence, grain out of the chaff, we find that it was appellant Ram Singh alone who committed the guilt. Possibility of over implication of appellants Banna Lal, Inder Singh and Pappu Singh @

Laxman Singh cannot be ruled out. Badri Bai and Chhoti were the partisan witnesses and thickly related to the deceased. Interest and partisanship is a stray element that weans one away unconsciously from truth. Learned trial court ought to have appreciated the evidence of Badri Bai and Chhoti in view of plea of alibi raised under section 313 CrPC on behalf of appellants Banna Lal, Inder Singh and Pappu Singh @ Laxman Singh. The statement of accused recorded under section 313 CrPC cannot be ignored lightly and has to be given due weight and adequate emphasis while recording the guilt against him. Such a statement may not be a sacrosent but certainly it deserves consideration.

11. As already noticed Ganga Ram after sustaining injuries got admitted in Neuro Surgery Ward of the Hospital. Ganga Ram died while he was given treatment in the hospital about seven days of the occurrence and Dr.Rajesh Jain (Pw.12) could not definitely say that the injuries sustained by Ganga Ram were sufficient in the ordinary course of nature to cause death. The incident appears to have occurred when Ganga Ram provoked appellant Ram Singh by erecting a hut on the land possessed by Ram Singh. In the facts and circumstances of the case it may be inferred that provocation was grave and sudden as a consequence of which Ram Singh lost his self control and inflicted injuries on the person of Ganga Ram. The act of appellant Ram Singh thus comes within the purview of Exception 1 to Section 300 IPC.

12. For these reasons, we dispose of instant matter in the following terms:-

(i) We allow the appeal of appellants Pappu Singh @ Laxman Singh, Inder Singh and Banna Lal and acquit them of the charges

under sections 302/34 and 341 IPC. All these appellants are on bail, they need not surrender and their bail bonds stand discharged.

(ii) We instead of section 302/34 convict the appellant Ram Singh under section 304 part II IPC and sentence him to suffer rigorous imprisonment for five years and fine of Rs.30,000/-, in default to further suffer one year rigorous imprisonment. Out of the fine deposited, Rs.25,000/- shall be paid to Badri Bai widow of deceased. We however confirm his conviction and sentence under section 341 IPC.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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